

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Item #17
ID #12026
RESOLUTION E-4575
April 18, 2013

REDACTED

R E S O L U T I O N

Resolution E-4575. Pacific Gas and Electric Company requests approval of an amended power purchase agreement with Sierra Power Corporation.

PROPOSED OUTCOME: This Resolution approves cost recovery for the amended and restated power purchase agreement between Pacific Gas and Electric Company and Sierra Power Corporation.

SAFETY CONSIDERATIONS: This resolution approves an amendment to a contract for the sale of renewable energy that will not alter any facility operations. Because this sales contract does not require a change in facility operations there are no incremental safety implications associated with approval of this contract amendment beyond the status quo.

ESTIMATED COST: Confidential

By Advice Letter 4007-E filed on March 1, 2012.

SUMMARY

Cost recovery for Pacific Gas and Electric Company's amended and restated renewable energy power purchase agreement (PPA) with Sierra Power Corporation is approved.

Pacific Gas and Electric Company (PG&E) filed Advice Letter (AL) 4007-E on March 1, 2012 requesting approval of an amendment to an existing power purchase agreement (PPA) with Sierra Power Corporation (Sierra Power). The amendment provides a higher price for delivered energy through the remainder

of the PPA term, ending July 8, 2014, in exchange for the addition of other beneficial terms and conditions.

Under the existing PPA, Sierra Power generates and sells Renewable Portfolio Standard (RPS)-eligible power from its 6 megawatt¹ (MW) biomass facility located in Terra Bella, California. Forecast annual generation of 45 gigawatt hours (GWh) is contracted to be delivered through July 8, 2014.

The amended PPA is the result of bilateral negotiations between Sierra Power and PG&E. In 2011, Sierra Power requested a price increase to support continued operation of the facility due to the expiration of a California Energy Commission (CEC) subsidy at the end of 2011 and increasing fuel costs. At PG&E's request, Sierra Power bid into PG&E's 2011 RPS request for offers (RFO), but the bid was not shortlisted. Sierra Power and PG&E subsequently negotiated a bilateral price increase amendment at a lower price than what was bid into the 2011 RFO. As a result, PG&E filed Advice Letter 4007-E to request approval of the price amendment to the existing PPA.

This resolution approves cost recovery for the Amended PPA between PG&E and Sierra Power without modification. The price and value of the amended PPA compares moderately well against a pool of short-term bilateral projects offered to PG&E in 2011. It is also an existing facility already delivering RPS-eligible power to PG&E that is highly viable in terms of its ability to continue delivering power pursuant to the PPA.

The following table summarizes the project-specific features of the agreement:

Generating Facility	Type	Term Years	MW Capacity	Annual Deliveries	Online Date	Project Location
Sierra Power	Biomass	Ending 7/8/2014	6	45 GWh	Existing	Terra Bella, CA

¹ The nameplate capacity is 7.5 MW.

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, and SB 2 (1X).² The RPS program is codified in Public Utilities Code Sections 399.11-399.31.³ Under SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.⁴

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

NOTICE

Notice of AL 4007-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

PG&E's Advice Letter 4007-E was timely protested on March 21, 2012 by the Division of Ratepayer Advocates (DRA). PG&E responded to the protest on March 28, 2012.

² SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

³ All further references to sections refer to Public Utilities Code unless otherwise specified.

⁴ D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods set forth in Section 399.15 (2011-2013, 2014-2016, and 2017-2020).

DRA did not object to the price or terms and conditions of the amended PPA, but recommended that the Commission approve the amended PPA only if it qualified as a long-term, bankable RPS contract. It was unclear to DRA whether the Amended PPA would continue to qualify as a long-term contract under Public Utilities Code Section 399.13(a)(4)(B), and hence be bankable, due to the short period of time the amendment covered. DRA also noted that the value to ratepayers would be diminished unless deliveries were bankable, because PG&E has a net surplus of renewable energy during the compliance periods in which the project would deliver energy.

In its response to DRA's protest, PG&E pointed out that while the provisions of the amendment will apply from the date of CPUC approval, the amendment is a change to an existing RPS contract and not, as DRA suggested, a new short-term contract. PG&E also noted that since the contract duration is greater than 10 years, its deliveries are bankable under Section 399.13(a)(4)(B). Lastly, PG&E also responded that regardless of bankability, continued deliveries from existing facilities like Sierra Power are important to ensuring compliance with PG&E's RPS requirements.

The Commission finds that DRA's concern regarding whether or not the renewable energy credits (RECs) for the Amended PPA's RPS-eligible generation can be banked for future compliance periods is not supported. Specifically, the price amendment is a change to an existing long-term RPS contract, executed before June 1, 2010, and thus, the amended Sierra Power PPA is not a new short-term contract. Because the amendment does not change the facility, capacity or generation associated with the original Sierra Power PPA, the RECs can be banked for future RPS compliance pursuant to Public Utilities Code Section 399.16(d) and D.12-06-038. Therefore, DRA's protest is denied on this basis.

DISCUSSION

PG&E requests Commission approval of an amended and restated renewable energy contract between PG&E and Sierra Power.

PG&E filed Advice Letter (AL) 4007-E on March 1, 2012 requesting approval of an amendment to an existing PPA with Sierra Power. The amendment provides a higher price for delivered energy through the remainder of the PPA term, ending July 8, 2014, in exchange for the addition of other beneficial terms and conditions.

Under the existing PPA, Sierra Power generates and sells Renewable Portfolio Standard (RPS)-eligible power from its 6 megawatt⁵ (MW) biomass facility located in Terra Bella, California. Forecast annual generation of 45 gigawatt hours (GWh) is contracted to be delivered through July 8, 2014.

The amended PPA is the result of bilateral negotiations between Sierra Power and PG&E. In 2011, Sierra Power requested a price increase to support continued operation of the facility due to the expiration of a California Energy Commission (CEC) subsidy at the end of 2011 and increasing fuel costs. At PG&E's request, Sierra Power bid into PG&E's 2011 RPS request for offers (RFO), but the bid was not shortlisted. Sierra Power and PG&E subsequently negotiated a bilateral price increase amendment at a lower price than what was bid into the 2011 RFO. As a result, PG&E filed Advice Letter 4007-E to request approval of the price amendment to the existing PPA.

PG&E requests that the Commission issue a resolution that:

1. Approves the Amendment in its entirety, including payments and the true-up to be made by PG&E pursuant to the Amendment, subject to the Commission's review of PG&E's administration of the Amendment.
2. Finds that any procurement pursuant to the Amendment is procurement from eligible renewable energy resources for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California RPS (Public Utilities Code Section 399.11 et seq.), D.03-06-071 and D.06-10-050, or other applicable law.
3. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.13(g), associated with the PPA as amended by the Amendment shall be recovered in rates.
4. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:

⁵ The nameplate capacity is 7.5 MW.

- a. The PPA, as amended by the Amendment, is consistent with PG&E's 2011 RPS procurement plan.
 - b. The terms of the PPA, as amended by the Amendment, including the price of delivered energy, are reasonable.
5. Adopts the following finding of fact and conclusion of law in support of cost recovery for the PPA as amended by the Amendment:
 - a. The utility's costs under the PPA as amended by the Amendment shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the PPA as amended by the Amendment are subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.
6. Adopts the following findings with respect to resource compliance with the EPS adopted in R.06-04-009:
 - a. The Amendment is not a form of covered procurement subject to the EPS, because the Amendment is not a new or renewed contract for a term of five or more years.
7. Adopts a finding of fact and conclusion of law that deliveries from the Amendment shall count in full toward PG&E's RPS requirements and shall be exempt from the RPS portfolio content category requirements because the original PPA and the Amendment meet the criteria set forth in Section 399.16(d) of the Public Utilities Code.

Energy Division Evaluated the Amended PPA on these Grounds:

- Consistency with Bilateral Contracting Rules
- Consistency with PG&E's 2011 RPS Procurement Plan
- Consistency with Least-Cost Best-Fit Requirements
- RPS Portfolio Need
- Price and Net Market Value Reasonableness
- Independent Evaluator (IE) Report
- Consistency with RPS Standard Terms and Conditions

- Procurement Review Group Participation
- Contribution to Minimum Long Term Contracting Requirement
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard

Consistency with Bilateral Contracting Rules

The Commission developed guidelines pursuant to which utilities may enter into bilateral RPS contracts. In D.03-06-071, the Commission authorized entry into bilateral RPS contracts, provided that such contracts did not require Public Goods Charge funds and were “prudent.” In D.06-10-019, the Commission established additional rules pursuant to which the IOUs could enter into bilateral RPS contracts. PG&E adhered to these bilateral contracting rules because the PPA is longer than one month in duration, the PPA was filed by advice letter, and the contract is reasonably priced, as discussed in more detail below.

In D.09-06-050, the Commission determined that bilateral agreements should be reviewed according to the same processes and standards as projects that come through a solicitation. Accordingly, as described below, the Amended Sierra Power PPA was compared to other RPS offers received in PG&E’s 2011 RPS solicitation; the proposed agreement was reviewed by PG&E’s Procurement Review Group; and an independent evaluator oversaw the project evaluation and PPA negotiation.

The Amended Sierra Power PPA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.

Consistency with PG&E’s 2011 RPS Procurement Plan

California’s RPS statute requires the Commission to direct each utility to prepare an annual RPS Procurement Plan (Plan) and then review and accept, modify, or reject the Plan prior to the commencement of a utility's annual RPS solicitation.⁶ The Commission must then accept or reject proposed PPAs based on their consistency with the utility’s approved Plan.

⁶ §399.13.

PG&E's stated preferences in its 2011 RPS Plan include 1) projects that allow it to address its long-term 33% mandate under the third compliance period, and 2) projects with high viability. The project is already providing energy to PG&E to help meet its compliance needs in the first and second compliance periods, which are periods in which PG&E has a net-long compliance position. The RECs associated with the generation delivered under the Amended PPA are bankable, so they can be banked to meet the third compliance period obligation. With regard to viability, as the project is already online and has been delivering RPS-eligible energy to PG&E under the existing PPA, the project is considered highly viable.

The Amended PPA is consistent with PG&E's 2011 RPS Procurement Plan approved by D.11-04-030.

Consistency with PG&E's Least-Cost Best-Fit (LCBF) Requirements

The LCBF decision directs the utilities to use certain criteria in their bid ranking.⁷ The decision offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. PG&E's LCBF bid evaluation includes a quantitative and qualitative analysis, as well as each proposal's absolute value to PG&E's customers and relative value in comparison to other proposals. The basic components of PG&E's LCBF evaluation and selection criteria and process for RPS contracts were established in the Commission's LCBF decisions D.03-06-071 and D.04-07-029.

Consistent with these decisions, the four main LCBF steps undertaken by PG&E are: (1) determination of market value of bid; (2) calculation of transmission adders and integration costs; (3) evaluation of portfolio fit, and; 4) consideration of non-price factors. PG&E applied these criteria to the proposals received in the 2011 solicitation in order to establish a shortlist of proposals from bidders with whom PG&E would engage in contract discussions. PG&E's 2011 RPS solicitation was the most recent solicitation at the time that the Amended Sierra Power PPA was negotiated and executed.

⁷ See D.04-07-029

Consequently, PG&E determined, based on its 2011 LCBF evaluation criteria, that although the amendment to the PPA was negotiated bilaterally, the price adjustment was reasonable and the cost was competitive with baseload proposals PG&E received in its 2011 Solicitation and with short-term price amendments for biomass Qualifying Facilities (QFs) executed in 2011.

After reviewing PG&E's LCBF evaluation of the PPA, the Commission finds that it is not appropriate to compare the short-term Amended Sierra Power PPA against long-term baseload offers that bid into the 2011 RFO because the net market valuation methodology employed by PG&E and Energy Division assigns higher value to long-term contracts than short-term contracts of equal price. It is also not appropriate to compare the Amended Sierra Power PPA to the QF contract amendments because QF contracts have different contract terms from RPS contracts, which impacts pricing, and as such, would not provide an adequate comparison for evaluating the relative price and value of the Sierra Power PPA.

It is appropriate to compare the Amended Sierra Power PPA's value against other short-term offers, rather than long-term offers included in PG&E's 2011 RPS Shortlist. Because the Amended PPA was for a short-term price amendment, and PG&E's 2011 RPS Solicitation Shortlist did not include any projects of a similar term length, Energy Division evaluated the price and value of the Amended PPA against a pool of short-term bilateral projects offered to PG&E at the end of 2011.

PG&E did not use an appropriate pool of bids for LCBF evaluation purposes.

The Amended Sierra Power PPA was evaluated consistent with the LCBF methodology identified in PG&E's 2011 RPS Procurement Plan.

RPS Portfolio Need

The California RPS Program was established by Senate Bill (SB) 1078 and has been recently modified by SB 2 (1X), which became effective on December 10, 2011. SB 2 (1X) made significant changes to the RPS Program.⁸ SB

⁸ The Commission opened Rulemaking (R.) 11-05-005 (May 5, 2011) to implement the new RPS law.

2 (1X) established new RPS procurement targets such that retail sellers must procure "...from January 1, 2011 to December 31, 2013...an average of 20 percent of retail sales...25 percent of retail sales by December 31, 2016, and 33 percent of retail sales by December 31, 2020."⁹

PG&E's expected RPS portfolio need begins in the third compliance period (2017 – 2020). PG&E does not need to procure incremental renewable energy to meet its RPS compliance needs in the first and second compliance periods, which are the periods in which the Sierra Power facility will deliver energy. That said, the RECs associated with the generation delivered from the project are bankable and can be used to help meet PG&E's RPS compliance need in the third compliance period or later RPS compliance obligations.

The Commission finds that generation from the Sierra Power project is a poor to moderate fit for PG&E's RPS portfolio need on the basis that PG&E does not need to procure generation in the compliance periods during which the Sierra Power facility delivers energy. However, PG&E may bank the excess RECs associated with generation from the Sierra Power facility to meet future compliance need.

Price Reasonableness and Net Market Value Reasonableness

The Amended PPA was executed in December 2011 and submitted to the Commission in March 2012. As described above, it is not appropriate to compare the price and value of the Amended Sierra Power PPA with baseload proposals PG&E received in its 2011 Solicitation and with short-term price amendments for biomass QFs executed in 2011. Accordingly, Energy Division staff compared the price and value of the Amended Sierra Power PPA to other short-term proposals offered to PG&E around the same time the amendment was executed.

Based on a comparison of the Amended Sierra Power PPA's price and value compared to the pool of short-term bilateral proposals offered to PG&E, the Sierra Power Amended PPA's price and value are reasonable. See Confidential Appendix A for a price and value comparison of the Amended PPA.

⁹ See § 399.15(b)(2)(B), SB 2 (1X)

The price of the Amended PPA is reasonable compared to short-term bilateral offers presented to PG&E at the end of 2011.

The net market value of the Amended PPA is moderate compared to short-term bilateral offers presented to PG&E at the end of 2011.

The CPUC approves cost recovery for the Amended PPA between PG&E and Sierra Power.

Independent Evaluator Report (IE)

PG&E retained Arroyo Seco Consulting as the Independent Evaluator (IE) for the Amended PPA. The IE conducted activities to review and assess PG&E's processes as the utility evaluated and negotiated the amendment to the contract. The IE's opinion is that the negotiations were conducted fairly and that the contract will provide moderate to high net valuation, a low to moderate contract price, moderate portfolio fit, and high project viability. Based on these findings, the IE concluded that the contract amendment merits Commission approval.

Consistent with D.06-05-039 and D.09-06-050, an Independent Evaluator oversaw PG&E's negotiations with Sierra Power, and recommends the Amendment to the contract for approval by the Commission. See Confidential Appendix B for the Independent Evaluator's summary of comments on AL 4007-E.

Consistency with RPS Standard Terms and Conditions (STCs)

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. The Commission further refined these STCs in D.10-03-021, as modified by D.11-01-025.

The Amended PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

Procurement Review Group Participation

The Procurement Review Group (PRG) process was initially established in D.02-08-071 to review and assess the details of the investor-owned utilities' overall procurement strategy, solicitations, specific proposed procurement

contracts and other procurement processes prior to submitting filings to the Commission as a mechanism for procurement review by non-market participants.

According to PG&E, participants in the PRG include representatives from the Commission's Energy Division, the Division of Ratepayer Advocates, the Department of Water Resources, the Union of Concerned Scientists, the Utility Reform Network, the California Utility Employees, and Jan Reid, as a PG&E ratepayer. PG&E presented the Amended PPA to the PRG on December 13, 2011.

Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group.

Long-Term Contracting Requirement

In D.12-06-038, the Commission established a long-term contracting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years duration for compliance with the RPS program.¹⁰ In order for the procurement from any short-term contract signed after June 1, 2010 to count for RPS compliance the retail seller must execute long-term contracts in the compliance period in which the short-term contracts are signed representing sufficient generation to cover the volume of generation from the short-term contract(s).¹¹

Because the term of the original Sierra Power PPA is greater than 10 years in length and the amendment meets the requirements set forth in Public Utilities

¹⁰ For the purposes of the long-term contracting requirement, contracts of less than 10 years duration are considered "short-term" contracts. (D.12-06-038)

¹¹ Pursuant to D.12-06-038, the methodology setting the long-term contracting requirement is: 0.25% of Total Retail Sales in 2010 for the first compliance period; 0.25% of Total Retail Sales in 2011-2013 for the second compliance period; and 0.25% of Total Retail Sales in 2014-2016 for the third compliance period.

Code Section 399.16(d), the amended Sierra Power PPA is not considered a short-term contract, nor will it contribute to PG&E's long-term contracting requirement established in D.12-06-038.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

California Public Utilities Code Sections 8340 and 8341 require the Commission to consider emissions associated with new long-term (five years or greater) power contracts procured on behalf of California ratepayers.

D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas (GHG) emissions of a combined-cycle gas turbine power plant. The EPS applies to all energy contracts for baseload generation that are at least five years in duration.¹² Generating facilities using certain renewable resources, including geothermal energy, are deemed compliant with the EPS.¹³

The Emissions Performance Standard established in D.07-01-039 does not apply to the Amended PPA because it is not a new or renewed energy contract for a term of five years or more.

Public Safety

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public.

This resolution approves an amendment to a contract for the sale of RPS-eligible generation from an operating facility. The contract amendment does not alter any facility operations. As this contract amendment does not require a change in facility operations, there are no incremental safety implications associated with approval of this contract amendment beyond the status quo.

¹² "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Utils. Code § 8340 (a).

¹³ D.07-01-039, Attachment 7, p. 4

RPS ELIGIBILITY AND CPUC APPROVAL

Pursuant to Public Utilities Code Section 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable “eligibility” language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.¹⁴

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law.”¹⁵

Notwithstanding this language, the Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract

¹⁴ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

¹⁵ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

enforcement activities shall be reviewed pursuant to the Commission's authority to review the utilities' administration of such contracts.

CONFIDENTIAL INFORMATION

The Commission, in implementing Public Utilities Code Section 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, including price, is confidential for three years from the date the contract states that energy deliveries begin, or until one year following contract expiration, except contracts between IOUs and their affiliates, which are public. Because the existing contract between Sierra Power and PG&E expires on July 8, 2004, facility was already delivery RPS-eligible energy to PG&E when the price amendment was executed, the confidential three year term adopted in D.06-06-066 will begin from the date of contract price amendment execution, December 21, 2011.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time. The price amendment to the contract will be made public by January 1, 2015.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced and comments were timely received by The Division of Ratepayer Advocates (DRA) on April 9, 2013

In its comments, DRA recommended that the Commission reject the Amended PPA for the following reasons: First, that PG&E did not conduct a cost benefit analysis to determine how banking RECs for an unspecified period of time would impact ratepayers. Second, ratepayers should not experience a price

increase due to Sierra Power's loss of a CEC subsidy and increased fuel costs. Third, the CPUC found that the generation is a poor to moderate fit for PG&E's RPS Portfolio need. Fourth, the Amended PPA goes against many of the proposed standards of review set forth in the October 5, 2012 Assigned Commissioner's Ruling (ACR) in R.11-05-005.¹⁶

In its March 21, 2012 protest to the Advice Letter, DRA did not object to the price or terms and conditions of the amended PPA, but recommended that the Commission approve the amended PPA only if the RECs were bankable as excess procurement for RPS compliance. As stated above, RECs procured under the Amended PPA will retain their full RPS compliance value for PG&E and its ratepayers. With regards to new concerns raised in DRA's comments, the energy and capacity value of this existing baseload resource is reasonable at the amended price and the Independent Evaluator concluded the contract amendment merits Commission approval.

DRA's comment related to how this Amended PPA would be reviewed according to standards of review proposed in the October 5, 2012 ACR is outside of the scope for this Resolution. The Commission is still considering standards of review for RPS procurement in the RPS proceeding (R.11-05-005) and DRA may participate in the procurement reform process in that proceeding.

FINDINGS AND CONCLUSIONS

1. The Commission finds that DRA's concern regarding whether or not the renewable energy credits (RECs) for the Amended PPA's RPS-eligible generation can be banked for future compliance periods is not supported. Specifically, the price amendment is a change to an existing long-term RPS contract, executed before June 1, 2010, and thus not a new short-term contract. Because the amendment to the existing Sierra Power PPA concerns the same facility and does not change the capacity or generation, the RECs can be banked for future RPS compliance pursuant to 399.16(d) and D.12-06-038. Therefore, DRA's protest is denied on this basis.

¹⁶ Second Assigned Commissioner's Ruling Issuing Procurement Reform Proposals and Establishing a Schedule for Comments on Proposals (October 5, 2012)
<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M029/K970/29970716.PDF>

2. The Amended Sierra Power PPA is consistent with the bilateral contracting guidelines established in D.06-10-019 and D.09-06-050.
3. The Amended PPA is consistent with PG&E's 2011 RPS Procurement Plan approved by D.11-04-030.
4. PG&E did not use an appropriate pool of bids for LCBF evaluation purposes.
5. The Amended Sierra Power PPA was evaluated consistent with the LCBF methodology identified in PG&E's 2011 RPS Procurement Plan.
6. The Commission finds that generation from the Sierra Power project is a poor to moderate fit for PG&E's RPS portfolio need on the basis that PG&E does not need to procure generation in the compliance periods during which the Sierra Power facility delivers energy. However, PG&E may bank the excess RECs associated with generation from the Sierra Power facility to meet future compliance need.
7. The price of the Amended PPA is reasonable compared to short-term bilateral offers presented to PG&E at the end of 2011.
8. The net market value of the Amended PPA is moderate compared to short-term bilateral offers presented to PG&E at the end of 2011.
9. Consistent with D.06-05-039 and D.09-06-050, an Independent Evaluator oversaw PG&E's negotiations with Sierra Power, and recommends the Amendment to the contract for approval by the Commission.
10. The Amended PPA includes the Commission-adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.
11. Pursuant to D.02-08-071, PG&E complied with the Commission's rules for involving the Procurement Review Group.
12. Because the term of the original Sierra Power PPA is greater than 10 years in length and the amendment meets the requirements set forth in Public Utilities Code Section 399.16(d), the amended Sierra Power PPA is not considered a short-term contract, nor will it contribute to PG&E's long-term contracting requirement established in D.12-06-038.
13. The Emissions Performance Standard established in D.07-01-039 does not apply to the Amended PPA because it is not a new or renewed energy contract for a term of five years or more.

14. Any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (*Public Utilities Code Section 399.11 et seq.*), D.11-12-020 and D.11-12-052, or other applicable law. This finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract.
15. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time. The price amendment to the contract will be made public by January 1, 2015.
16. Advice Letter 4007-E should be approved effective today without modification.
17. Payments made by PG&E under the Amended PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of PG&E's administration of the PPA.

THEREFORE IT IS ORDERED THAT:

1. The amendment to the power purchase agreement between Pacific Gas and Electric Company and Sierra Power Corporation as proposed in Advice Letter 4007-E is approved without modifications.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 18, 2013; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Price/Net Market Value Reasonableness, Need and
Viability

[REDACTED]

Confidential Appendix B

Independent Evaluator Conclusions and Recommendations

[REDACTED]

Confidential Appendix C

Amended and Restated Contract Terms and Conditions

[REDACTED]